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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,568	01/10/2007	Yoshito Oki	293768US0PCT	8924
22850	7590	07/21/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
WALCK, BRIAN D				
ART UNIT		PAPER NUMBER		
1793				
NOTIFICATION DATE		DELIVERY MODE		
07/21/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdoCKET@oblon.com  
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# Office Action Summary

**Application No.**

10/587,568

**Applicant(s)**

OKI ET AL.

**Examiner**

Brian Walck

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 and 10-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claim 6 (and newly added claims 10-21) in the reply filed on 6/22/2009 is acknowledged.

### ***Claim Rejections - 35 USC § 102/103***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**6. Claims 6 and 10-21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 2002-161323 to Shoji et al (cited by applicant in IDS).**

Regarding claim 6, Shoji discloses a high-strength aluminum alloy fin material for heat exchangers having high strength and excelling in thermal conductivity and sacrificial anode effect comprising the following composition (Shoji, Table at top of page 7, alloy 14), which lies wholly within the instantly claimed composition:

Element	Claimed wt%	*** wt%	Lies within?
Si	0.8-1.4	1.0	Yes
Fe	0.15-0.7	0.6	Yes
Mn	1.5-3.0	2.3	Yes
Zn	0.5-2.5	1.0	Yes
Al	Balance	Balance	Yes
Mg	0-0.05	~0	Yes

Although Shoji does not explicitly disclose that the instantly claimed tensile strength before or after brazing or recrystallized grain size after brazing, nor does Shoji

explicitly state the material excels in erosion resistance, sag resistance, or self-corrosion resistance, when the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established (see MPEP 2112.01 [R-3].) In the instant case, the aluminum alloy fin material of Shoji would be expected to have the same properties or very similar properties to the instantly claimed aluminum alloy fin material because both have the same composition, structure, and purpose. Therefore, a rejection based alternatively on either 35 U.S.C. 102(b) or 35 U.S.C. 103(a) is eminently fair and acceptable.

Regarding claims 10-14, the aluminum alloy fin material of Shoji lies wholly within the instantly claimed composition ranges.

Regarding claim 19-21, Shoji discloses that in alloy 14, Cu is present in an amount of 0.15 wt% (within the claimed range of at most 0.2 wt%), Zr is present in an amount of 0.2 wt% (within the claimed range of at most 0.2 wt%) and Cr, Ti, and V are present in no more than negligible levels (Shoji, Table at top of page 7, alloy 14).

Regarding claims 15-18, although Shoji does not explicitly disclose the instantly claimed properties, when the structure recited in the reference is substantially identical to that of the claims, claimed properties or functions are presumed to be inherent. Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical

processes, a prima facie case of either anticipation or obviousness has been established (see MPEP 2112.01 [R-3].) In the instant case, the aluminum alloy fin material of Shoji would be expected to have the same properties or very similar properties to the instantly claimed aluminum alloy fin material because both have the same composition, structure, and purpose. Therefore, a rejection based alternatively on either 35 U.S.C. 102(b) or 35 U.S.C. 103(a) is eminently fair and acceptable.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Walck whose telephone number is (571)270-5905. The examiner can normally be reached on Monday-Friday 9 AM-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571)272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Roy King/  
Supervisory Patent Examiner, Art  
Unit 1793

/Brian Walck/  
Examiner, Art Unit 1793